

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

STATE OF IOWA,
Public Employer/Petitioner.

CASE NO. 5206

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PUBLIC EMPLOYMENT
RELATIONS BOARD

RULING AND ORDER

On September 16, 1994, the State of Iowa, by the Iowa Department of Personnel, filed a petition for declaratory ruling with the Public Employment Relations Board (PERB). Chapter 10 of PERB's rules, 621 IAC 10.1 et seq., sets forth the governing principles concerning such petitions and proceedings thereon. PERB rule 621-10.5 provides that if the petition is based upon specific facts or raises questions which directly involve another party, that party shall be served with a copy of the petition by ordinary mail. On its face, the State's petition appears to involve another party, and indicates its service of a copy of its petition upon that party--the American Federation of State, County & Municipal Employees/Iowa Council 61 (AFSCME). AFSCME has not sought intervention herein as allowed by PERB rule 621-10.6.

PERB subrule 621-10.2(2), concerning the content of petitions for declaratory rulings, specifies that such petitions shall contain "[t]he specific facts upon which the board is to base its declaratory ruling. . . ." Subrule 621-10.2(3) requires that petitions set forth "[t]he specific questions upon which petitioner seeks a declaratory ruling."

Accordingly, the facts relevant to our determination are those set forth in the State's petition, as amended on October 26, 1994.

The relevant facts which are set forth in those filings may be summarized as follows:

The State is a public employer as defined by Iowa Code section 20.3(11) and employs individuals who, by virtue of their positions, are required to maintain a valid commercial drivers license.

AFSCME is an employee organization within the meaning of Iowa Code section 20.3(4) and is the certified collective bargaining representative of bargaining units which include employees required to maintain commercial drivers licenses.

The State and AFSCME are parties to a collective bargaining agreement negotiated pursuant to the provisions of the Public Employment Relations Act, Iowa Code ch. 20.

Pursuant to the Federal Omnibus Transportation Employees Testing Act of 1991, large employers such as the State are required to implement drug and alcohol testing procedures, and employees whose positions require commercial drivers licenses shall be required to submit to random drug and alcohol tests.

The federal regulations promulgated in response to the aforementioned legislation (49 C.F.R. §40) provide, in part:

The rules contemplate that many aspects of the employer/employee relationship with respect to these programs will be subject to collective bargaining. For example, who pays for assessment and revaluation is one area we explicitly do not regulate. However, employers and employees are not free to bargain away any of the requirements of these rules. Whatever rights they may have to bargain collectively or otherwise agree on employer-employee relations, they cannot change or ignore Federal safety standards.

QUESTION POSED

The State's petition requests that we issue a declaratory ruling "on the issue of whether or not implementing and administering drug and alcohol tests, as required by Federal law, is a mandatory, permissive or illegal subject of bargaining."

DISCUSSION

In view of the minimal facts set forth in the State's petition, we find its request that we make a declaration as to the negotiability status of "implementing and administering drug and alcohol tests, as required by Federal law" to be too vague to permit a reasoned negotiability analysis.

It may well be that multiple aspects of a drug and alcohol testing program implemented in compliance with the federal statute would be mandatorily negotiable under a number of the topics specified in Iowa Code section 20.9. The language quoted above, which the State attributes to 49 C.F.R. §40 and urges us to consider, clearly indicates that Congress has not attempted to dictate all of the details of all drug and alcohol testing programs which might be implemented in compliance with the legislation, thus leaving the parties to negotiate those aspects of the program which fall within the scope of mandatory bargaining.

Whether any given aspect of the drug and alcohol testing program contemplated by the State in fact falls within the scope of mandatory bargaining, or instead constitutes a permissive or illegal subject, depends in large part upon both the federal legislation and the precise content of the particular testing

program and procedures--information which the State has not included in its petition.

Although Iowa Code section 17A.9 requires agencies to provide rules for the filing and prompt disposition of petitions for declaratory rulings, it is clear that an agency may, under appropriate circumstances, lawfully dispose of a petition by declining to rule on its merits.¹

Absent additional facts concerning the relevant legislation and the specific testing program in question, we cannot determine the negotiability status of any aspect of a drug and alcohol testing program's implementation and administration.

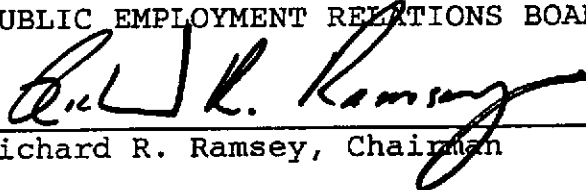
Accordingly, we issue the following:

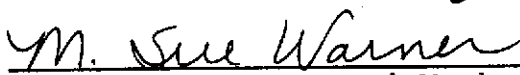
ORDER

The State of Iowa's petition for declaratory ruling is hereby DISMISSED.

DATED at Des Moines, Iowa this 30th day of January, 1995.

PUBLIC EMPLOYMENT RELATIONS BOARD


Richard R. Ramsey, Chairman


M. Sue Warner, Board Member


Dave Knock, Board Member

¹See, e.g., A. Bonfield, The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rule Making Process, 60 Iowa L. Rev. 731, 807 (1975); Women Aware v. Reagen, 331 N.W.2d 88, 92 (Iowa 1983); Iowa Association of School Boards, 89 PERB 4092; City of Waterloo, 94 PERB 5067.